

REMARKS

In the Office Action, the Examiner rejected the claims under 35 USC §103.

Applicant respectfully traverses these rejections.

The specification and claims have been amended to correct various typographical errors identified by the Examiner. Claims 1-2, 4-9, 11-27, and 29-42 remain pending.

Reconsideration of the application is respectfully requested based on the following remarks.

REJECTION OF CLAIMS UNDER 35 USC §103

In the Office Action, the Examiner rejected claims 1-2, 4, 6-8, and 42 under 35 USC §103 as being unpatentable over by Brendel, U.S. Patent No. 6,587,438, ('Brendel' hereinafter) in view of Ishizaki et al, U.S. Patent No. 6,810,421, ('Ishizaki' hereinafter). This rejection is respectfully traversed.

As disclosed in the Background section of Applicant's specification:

Both the round-trip-response time metric and the boomerang race system methods are valuable in determining a fastest link among multiple links. However, such calculations rely upon the premise that these travel times are static. In other words, these calculations do not take into consideration that transmission times rely, at least in part, upon network availability of service providers of the Internet. Accordingly, neither of these methods is capable of determining a fastest provider from among multiple facilities or service providers. It would therefore be desirable if

a mechanism were provided to enable the optimum service provider to be selected dynamically among multiple service providers on a per transaction basis.

The cited references, separately or in combination, fail to disclose or suggest the need for determining a fastest provider among multiple service providers. Moreover, the cited references, separately or in combination, fail to disclose or suggest a mechanism for dynamically selecting among multiple service providers.

Brendel says nothing about maintaining a mapping of each different type of service to an IP address, where the type of service directly corresponds to an Internet Service Provider. While col. 10, lines 61-64 of Brendel indicates that each packet header specifies a different path by including a different list of IP addresses of intermediate routers, the packet header does not identify a type of service that directly corresponds to an Internet Service Provider. As such, Applicant respectfully asserts that Brendel fails to disclose or suggest sending a plurality of response packets such that each of the plurality of response packets identifies or is sent via a different one of a plurality of ISPs.

The Examiner further cites col. 10, lines 65-67, which indicates that a path-matching routing table contains a list of alternate gateways. The Examiner asserts that the gateways may be considered as service providers since gateways are known in the art to provide services such as interconnecting networks and routing packets and/or providing communication between two different protocols. However, Applicant respectfully asserts that gateways are not ISPs. In fact, as shown in FIG. 3A of Brendel, gateways 14 and 16 are shown to be separate entities from the single ISP, ISP 18.

The Examiner admits that Brendel does not specifically teach of maintaining a mapping of each different type of service to an IP address and an IP address associated with a

type of service identified in the first one of the plurality of response packets. The Examiner seeks to cure the deficiencies of Brendel with Ishizaki.

The Examiner cites col. 7, lines 9-12, col. 8, lines 13-15, and col. 10, lines 4-11 of Ishizaki. While Ishizaki discloses a service table including service types and service providing servers, Ishizaki fails to disclose maintaining a mapping of each different type of service to an IP address, where the type of service corresponds to an ISP. Due to these deficiencies and the deficiencies of Brendel set forth above, Applicant respectfully asserts that the combination of the cited references would fail to operate as claimed.

The Examiner further rejects claim 5 under 35 USC 103(a) as being unpatentable over Brendel and Ishizaki in view of Coughlin, U.S. Patent No. 6,810,411, ('Coughlin' hereinafter).

Although Coughlin teaches mapping host names to IP addresses, Coughlin fails to show or suggest a service field that indicates a type of service corresponding to one of the plurality of ISPs. In addition, Coughlin refers to "the ISP," thereby implying that a plurality of packets are transmitted via a single ISP. Thus, Applicant respectfully asserts that Coughlin fails to cure the deficiencies of the primary references. Moreover, the combination of the cited references would fail to achieve the desired result. Accordingly, Applicant respectfully asserts that claim 5 is patentable over the cited references.

In the Office Action, the Examiner rejected claims 9, 12-15, 19, and 22-26 under 35 USC §103 as being unpatentable over Brendel, in view of Coughlin. This rejection is respectfully traversed.

While Coughlin teaches mapping host names to IP addresses, Coughlin fails to show or suggest a service field that indicates a type of service corresponding to one of the plurality of ISPs. In addition, Coughlin refers to "the ISP," thereby implying that a plurality of packets are transmitted via a single ISP. As such, Applicant respectfully asserts that the combination of the cited references would fail to achieve the desired result. Accordingly, Applicant respectfully asserts that claims 9, 12-15, 19, and 22-26 are patentable over the cited references.

In the Office Action, the Examiner rejected claims 11, 16-18, 20, and 21 under 35 USC §103 as being unpatentable over Brendel and Coughlin, in view of Ishizaki. This rejection is respectfully traversed.

In view of the deficiencies of Brendel and Coughlin, Applicant respectfully asserts that Ishizaki fails to cure the deficiencies of the primary references. The Examiner cites col. 7, lines 9-12, col. 8, lines 13-15, and col. 10, lines 4-11 of Ishizaki. While Ishizaki discloses a service table including service types and service providing servers, Ishizaki fails to disclose maintaining a mapping of each different type of service to an IP address, where the type of service corresponds to or identifies an ISP. Due to these deficiencies and the deficiencies of Brendel and Coughlin set forth above, Applicant respectfully asserts that the combination of the cited references would fail to operate as claimed.

In the Office Action, the Examiner rejected claims 27 and 29-41 under 35 USC §103 as being unpatentable over Brendel, in view of Bohannon et al, U.S. Patent No. 7,103,651, ('Bohannon' hereinafter). This rejection is respectfully traversed.

Applicant respectfully asserts that Brendel says nothing about transmitting a plurality of response packets, where each response packet is transmitted via a different one of a plurality of Internet Service Providers. The Examiner seeks to cure the deficiencies of Brendel with Bohannon.

Applicant respectfully asserts that Bohannon fails to cure the deficiencies of Brendel, as set forth above. Applicant respectfully asserts that the combination of the cited references would fail to transmit a plurality of response packets, where each of the response packets is transmitted via a different ISP. Bohannon fails to cure the deficiencies of Brendel. As such, the combination of the cited references would fail to achieve the desired result. Accordingly, Applicant respectfully asserts that claims 27 and 29-41 are patentable over the cited references.


Based on the foregoing, it is submitted that the remaining independent claims are also patentable over the cited references. In addition, it is submitted that the dependent claims are also patentable for at least the same reasons. The limitations recited in the independent claims or the dependent claims are not further-discussed as the above-discussed reasons are clearly sufficient to distinguish the pending claims from the cited art. Thus, it is respectfully requested that the Examiner withdraw the rejection of the claims under 35 USC §103.

SUMMARY

If there are any issues remaining which the Examiner believes could be resolved through either a Supplemental Response or an Examiner's Amendment, the Examiner is respectfully requested to contact the undersigned attorney at the telephone number listed below.

Applicants hereby petition for an extension of time which may be required to maintain the pendency of this case, and any required fee for such extension or any further fee required in connection with the filing of this Amendment is to be charged to Deposit Account No. 504480 (Order No. CISCPI99).

Respectfully submitted,
Weaver Austin Villeneuve & Sampson LLP



Elise R. Heilbrunn
Reg. No. 42,649

PO Box 70250
Oakland, CA 94612-0250
(510) 663-1100